

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2874 OF 2007

Shri Khimji Lakhmasi Chheda ..Petitioner

Vs.

Digambar K. Sahane
Since deceased by his legal
representative and ors. ..Respondents

Mr. Anilkumar Patil for petitioner.
Ms. Gauri Godse for respondent no.5.

CORAM: B.H. MARLAPALLE, J.

Date : June 22, 2007.

P.C.:

1. Heard Mr. Patil the learned counsel for the petitioner and Ms. Godse the learned counsel for the respondent no.5.

2. The petitioner has filed Regular Civil Suit No. 591 of 2005 and prayed for the following decree:-

"For possession of a premises in new construction being erected on the property bearing Survey No.184/A (Part), Tika No.12,

Opp. Gadkari Rangayatan, of 366 sq.ft. carpet area on the ground floor having frontage on Dr.Moose Road, as tenant, for commercial purposes at standard rent."

3. In the said suit, an application at Exh.5 came to be filed purportedly under Section 94 read with Order 39 Rule 1 and 2 of C.P.C. for an injunction in the following terms:-

"Restraining defendants from carrying out any construction activity on C.T.S. 184 (A part) Dr. Moose Road, until the defendants/opponents produce sanctioned plan before the Hon'ble Court earmark premises on the ground floor facing Dr. Moose Road for commercial use admeasuring 366 sq.ft. carpet or thereabout for the applicant/plaintiff & further undertake to the Hon'ble Court not to create 3rd party interest in such earmark premises during pendency of the suit."

4. This application has been allowed by the trial

court on 22/6/2006 and there was further amendment in the said order on 11/8/2006. Thus the injunction order granted by the trial court below Exh.5 reads as under:-

"The defendants are restrained by an order of temporary injunction from carrying out the construction of the proposed building of "Janki Niwas" in City Survey No.184-A till the defendants specifically earmark the portion equivalent to the tenanted premises (366 sq.ft.) of the plaintiff on the Ground Floor in the plan of the proposed building or till the decision of the suit whichever is earlier."

. The above order was challenged in Misc. Appeal No. 113 of 2006 and the same came to be dismissed by the learned In-charge Joint District Judge at Thane on 26/2/2007.

5. Mr.Patil claimed that the petitioner was a tenant in the old building and on its demolition for

the construction of a new building, he would be entitled for similar premises in view of the scheme of Section 21 of the Maharashtra Rent Control Act, 1999. He further submitted that the premises to be allotted in the new building must face Dr. Moose Road and not any other premises on the ground floor. He also pointed out that it must be office no.1.

6. It is evident that the final relief that is being sought by the plaintiff in the pending suit is for the office premises facing Dr.Moose Road and for prima facie consideration Mr. Patil referred to the rent receipt dated 19/7/1981 (Exh.H). In the said receipt is issued in favour of R.K. Shah and Mr.Patil claims that it is the name of the plaintiff. This receipt described the tenanted premises as "Office No.1, Ground floor, 4 Rooms, self contained Block". The receipt does not indicate that the old premises in occupation of the plaintiff were facing Dr.Moose Road. However, this issue has to be decided in the trial of the suit and the relief granted by the trial court by passing the order below Exh.5 and quoted above is only on the prima facie considerations. In my considered

opinion, the courts below have duly protected the interest of the plaintiff by directing to earmark premises on the ground floor and admeasuring 366 sq.ft. carpet area and office no.1.

7. Hence, no interference is called for in the order passed below Exh.5 impugned in this petition. Petition is summarily rejected.

(B.H. Marlapalle, J.)